

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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NPFCCCLAIMSINFO@uscg.mil

5890
April 23, 2014

Guilford County Department of Public Health
Environmental Health Division
400 W Market Street
Greensboro, NC 27401

RE: 914055-0001

Dear Mr. Cole:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 914055-0001 involving an illegal dumping of home heating fuel in the road, on the corner of East Camel and Mary Eula Street.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided.

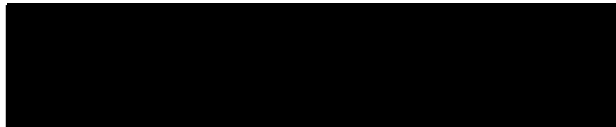
A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action.

All correspondence should include claim number 914055-0001.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,



Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

| | |
|--------------------------|---|
| Claim Number: | 914055-0001 |
| Claimant: | Guilford County Department of Public Health |
| Type of Claimant: | Local Government |
| Type of Claim: | Removal Costs |
| Claim Manager: | Dawn Unglesbee |
| Amount Requested: | \$478.00 |

FACTS:

Oil Spill Incident

On December 6, 2013, Greensboro Storm Water Division received a report of an illegal dumping of home heating fuel in the road, on the corner of East Camel and Mary Eula Street in Greensboro, North Carolina. An unknown quantity of product was dumped and contained in a puddle with storm water in the middle of the road.

The incident was reported to the National Response Center via the web reporting system and Incident report # 1067786 was generated.¹

Guilford County Department of Public Health (Claimant) contracted with A&D Environmental Services, Inc.² to remove the product and affected soil to prevent surface water contamination.

Federal On-Scene Coordination (FOSC) was made with the United States Environmental Protection Agency, (US EPA) Mr. Subash Patel, who signed the Claimant's Emergency Response Incident Report, stating that this incident response was reasonable and necessary, and was properly coordinated with the FOSC in accordance with the National Contingency Plan (NCP).

The Responsible Party remains unknown.

Claim

On April 8, 2014, the Claimant presented a removal cost claim to the National Pollution Funds Center (NPFCC) for reimbursement of their uncompensated removal costs in the amount of \$478.00.

Description of Removal Activities

Claimant submitted an A&D Environmental Services, Inc. invoice in the amount of \$478.00.³ A&D Environmental Services, Inc. responded the same day, December 6, 2013, and cleaned up the oil from the road curbing and the puddle water by using oil absorbent pads and speedy dry. A&D Environmental Services, Inc. did provide a non-hazardous disposal manifest.

¹ See. NRC Incident Report # 1067786 in claim file.

² See, A&D Environmental Services, Inc. Invoice # 017891.

³ *id*

APPLICABLE LAW:

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish –

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

Determination of Loss

A. Findings of Facts

1. FOSC coordination was made by US EPA, who determined that the removal actions were consistent with the NCP.
2. The incident did not involve the discharge or substantial threat of discharge of oil into the navigable waters as defined in 33 U.S.C. 2701(21).
3. The Responsible Party was not identified. 33 U.S.C. 2701(32).
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim.

B. Analysis

Upon a review of the facts of the incident and documentation provided by Claimant, the NPFC has determined this claim is denied. The evidence demonstrates that there was a discharge of oil that only impacted a curb side puddle but failed to address the nexus from the puddle to a navigable waterway. The Claimant provided a road map and highlighted the area of the incident although this map does not depict the nexus to a navigable waterway. The Claimant also provided a geographical map and this map also does not demonstrate how the oil and water would or could impact a navigable waterway.

The NPFC performed independent research using Google Maps to examine available pictures of the corner of Mary Eula Street and East Camel Street in Greensboro, North Carolina, 27401 where the incident occurred. Evidence shows that at the corner of these two streets where the incident happened, there appears to be a standing puddle that could only run into the nearby grass and into the front yard of a home on the corner of Mary Eula Street and East Camel Street. The NPFC Claims Manager studied the online map and used the "street view" feature to completely examine the area and has not found a storm sewer or nexus to a navigable waterway.

Based on a preponderance of the evidence, the NPFC has determined that the Claimant has failed to meet their burden in demonstrating that the incident posed a substantial threat of discharge into or upon a navigable waterway.

Based on the foregoing this claim is denied.

Claim Supervisor:

Date of Supervisor's review: 4/23/14

Supervisor Action: *Denial Approved*